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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re L.P., a Person Coming Under the
Juvenile Court Law.

B215312
(Los Angeles County Super. Ct.
No. LK02488)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

L.P.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County, Valerie Skeba, Juvenile Court Referee. Affirmed.

Anna L. Ollinger, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the Los Angeles County Counsel, James M. Owens, Assistant County Counsel, and Sarah Vesecky, Deputy County Counsel, for Plaintiff and Respondent.

L.P. (mother) appeals from the judgment of March 18, 2009, denying her petition under Welfare and Institutions Code section 388¹ for a change of order and terminating parental rights under section 366.26 to her daughter, L. She contends the order denying her petition was an abuse of discretion. Finding no abuse of discretion, we affirm.

STATEMENT OF FACTS AND PROCEDURE

L., born to mother and an unknown father in May 2007, was detained at birth because mother tested positive for illegal drugs, used cocaine and marijuana daily throughout the pregnancy, and received no prenatal care. Mother had a long history of substance abuse, failures to complete drug programs and maintain sobriety, drug-related criminal activity, and neglect of her children. Mother previously lost custody of her four older children, ages 5, 12, 13, and 16, as a result of her drug use and failure to comply with dependency court reunification orders.

After L. was detained, mother entered a six-month inpatient drug recovery program. She was terminated three months later because she tested positive for cocaine. She had little contact with L.

The jurisdiction/disposition hearing was held on November 2, 2007, for mother's contest. Mother did not attend. L. was declared a dependent of the court based on sustained allegations under section 300, subdivision (b), that she suffered or there is a substantial risk she will suffer serious physical harm as a result of mother's failure to adequately supervise or protect and mother's inability to provide regular care due to substance abuse. Custody was taken from mother, no reunification services were ordered, and a section 366.26 hearing was scheduled for March 7, 2008, to determine the permanent plan. Mother was awarded monitored visits.

¹ All statutory references are to the Welfare and Institutions Code, unless otherwise specified.

Mother's whereabouts were unknown. The matter was continued from date to date for notice to mother. Mother did not visit L. or maintain contact with the Department.

It was highly likely that L. would be adopted. She had been living in her foster home since she was seven days old. The foster mother, a preschool teacher, wanted to adopt her, and an adoptive home study was approved. "[Nine-month-old] L. is very bonded to [the foster mother], and she is easily soothed and comforted by her." At 17 months of age, "L. is very attached to her current caregiver who is eager to provide her with a permanent nurturing home through adoption." Despite the delays in holding the permanency hearing, the foster mother remained committed to adoption. L. and the foster mother had a "healthy parent-child attachment."

Mother was personally served with notice of the section 366.26 hearing. She did not thereafter contact the social worker or foster mother to inquire about L.

On December 12, 2008, mother was arrested for possession of a controlled substance. The police recovered rock cocaine and two glass pipes containing white residue.

The section 366.26 hearing was scheduled for February 5, 2009. Mother was present on that date and requested a contest. The dependency court continued the section 366.26 hearing to March 18, 2009, one year after the hearing's original date, for mother's contest.

On February 6, 2009, mother enrolled in an outpatient drug treatment program. Mother visited L. in March 2009, but L. had no attachment to mother.

On March 18, 2009, the date of the contested section 366.26 hearing, mother filed a petition under section 388² requesting that the November 2, 2007 order denying

² Section 388 provides, in pertinent part: "Any parent . . . may, upon grounds of change of circumstance or new evidence, petition the court . . . for a hearing to change, modify, or set aside any order of court previously made The petition . . . shall set forth in concise language any change of circumstance or new evidence which are alleged to require the change of order [¶] . . . [¶] (d) If it appears that the best interests of

reunification services be changed in favor of an order granting “reunification services and an opportunity to reunify” with L. She alleged the following changed circumstances existed: mother “is testing negative through a Prop 36 program, attending that program’s individual and group sessions, and is attending twelve[-]step meetings. [Mother] has paperwork confirming that she reported for [Department] testing, but that the collection site had not received paperwork from [the Department]. . . . [Mother] visited L.” Mother also alleged that providing her with an opportunity to reunify would “be better for the child[.]” in that mother “demonstrated the ability to change and is demonstrating her commitment to being a good mother. The change requested will provide L. with the opportunity to have a model for positive change and a loving parental relationship.” Mother attached exhibits indicating she was on probation and attended drug treatment as a condition of probation. Her drug treatment program required a minimum of 12 weeks to complete and included 12 weeks of random drug-testing, two weekly counseling sessions, and three weekly 12-step meetings. Her progress in this program, as of the March 18, 2009 hearing, consisted of one week’s worth of 12-step meetings. Prior to her December 2008 arrest for possession of cocaine, she attended meetings in September 2008. She attended daily AA/NA meetings during the two weeks of December 2008 after her arrest for cocaine possession.

The section 366.26 hearing was held on March 18, 2009. First, the dependency court denied the section 388 petition, stating: “I reviewed mother’s 388. First of all, I’m not sure there’s a substantial change in circumstances. . . . I think there may be changing circumstances, but I don’t believe it rises to the level of a substantial change in

the child may be promoted by the proposed change of order, . . . the court shall order that a hearing be held and shall give prior notice, or cause prior notice to be given [to the parties].” “It is not enough for a parent to show just a genuine change of circumstances under the statute. The parent must show that the undoing of the prior order would be in the best interests of the child.” (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 529.) “In the context of a motion pursuant to section 388 for change of placement after the termination of reunification services, the predominant task of the court [is] to determine the child’s best interest[.]” (*In re Stephanie M.* (1994) 7 Cal.4th 295, 320.)

circumstances. However, even if it did, I don't believe it would be in the best interests of the child to grant mother's 388."

The dependency court then conducted the section 366.26 hearing. Evidence was admitted that indicated mother attended 10 group sessions and three individual sessions since enrollment in her Prop 36 program and had four clean drug tests in February and March 2009. Mother testified she had two visits in March 2009. Prior to those visits, the last time she visited was in June 2008. L. did not call her "mommy." Parental rights were terminated. The dependency court ordered the matter referred to the Children's Consortium to allow continued contact between mother and L. and between L. and her sibling M.

Mother appealed the denial of her section 388 petition and the order terminating parental rights.

DISCUSSION

Mother contends the denial of her section 388 petition without an evidentiary hearing was an abuse of discretion. We disagree. California Rules of Court, rule 5.570(h)(2) provides that the court may in its discretion limit proof to declaration and other documentary evidence.³ Mother did not object to the procedure and did not proffer any testimony at the hearing. Accordingly, mother has not preserved this issue for appeal. (*Marlene M. v. Superior Court* (2000) 80 Cal.App.4th 1139, 1149.) In any event, the dependency court did not abuse its discretion in limiting the evidence to the documents attached to the petition. There were no material conflicts in the evidence and

³ "The hearing must be conducted as a disposition hearing under rules 5.690 and 5.695 if: [¶] (A) The request is for removal from the home of the parent or guardian or to a more restrictive level of placement; or [¶] (B) There is a due process right to confront and cross-examine witnesses. [¶] Otherwise, proof may be by declaration and other documentary evidence, or by testimony, or both, at the discretion of the court." (Cal. Rules of Court, rule 5.570(h)(2).)

no credibility issues to be determined. (Compare *In re Clifton V.* (2001) 93 Cal.App.4th 1400, 1403-1405 [a “clear credibility contest” between two witnesses, in directly conflicting declarations, which the dependency court needed to resolve, required live testimony and cross-examination].) The allegations of recent enrollment in a drug program described, at most, changing circumstances, not changed circumstances, and did not show that revival of the issue of reunification with a parent L. did not know was in L.’s best interest.

To the extent mother contends on appeal that a recent order for reunification services in older sibling M.’s case⁴ triggered the right to a different procedure, we note that mother’s petition did not allege that the order in M.’s case was a changed circumstance warranting a change of order in L.’s case. Looking beyond the failure to rely on this ground in the petition below, we hold that the finding that an award of reunification services was in the best interest of M., so that he could have a relationship with mother, is irrelevant to L. M. was an older child who had a positive relationship with mother and no other available parental figure. Twenty-two-month-old L. had no relationship with mother and was bonded with the only caretaker she has ever known. The grant of reunification services to mother in regard to M. in no way indicates it was in the best interest of L. to issue a similar order.

⁴ Custody of M. was taken from mother, and M. was made a dependent, in 2006. He was placed with his father and jurisdiction was terminated. On February 5, 2009, after father became incarcerated, M. was made a dependent again when he was six years old. The dependency court ordered reunification services for mother. The court found mother was making some effort to treat her drug problem and, even if it was not a reasonable effort, it was in M.’s best interest to order reunification services, because “[M.] has a positive relationship with his mother. [¶] This is an older child. . . . [I]t does appear that the child . . . has a positive relationship with his mother. And he’s quoted as saying he misses her and he wants to see her.”

DISPOSITION

The judgment is affirmed.

KRIEGLER, J.

We concur:

TURNER, P. J.

MOSK, J.